

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IAN MICHAEL HARRIS,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

NO. CV-09-235-CI

**ORDER ADOPTING REPORT
AND RECOMMENDATION TO
DISMISS ALL CLAIMS WITH
PREJUDICE**

Magistrate Judge Imbrogno filed a Report and Recommendation on August 5, 2010, recommending Respondent's Motion to Dismiss be granted and Petitioner's application for habeas relief be dismissed with prejudice. (Ct. Rec. 21.) Objections were due on or before August 19, 2010. There being no objections filed, the Court adopts the Report and Recommendation.

Because this is the Court's final order in this matter, the December 1, 2009 amendments to Rule 11(a) of the Federal Rules Governing Section 2254 Cases require the Court to determine in this Order whether a certificate of appealability should issue. The Court finds additional briefing on this issue unnecessary.

The Antiterrorism and Effective Death Penalty Act of 1996 requires a habeas petitioner appealing the denial of a 28 U.S.C. § 2254 to obtain a certificate of appealability. 28 U.S.C. § 2253(c). A court may issue a certificate of appealability only if the "applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner must show that "reasonable jurists could debate whether . . . the petition should have been resolved

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1 in a different manner or that the issues presented were adequate to deserve
2 encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)
3 (internal quotations omitted). The decision to issue a certificate of appealability
4 turns not on the court’s assessment of the applicant’s chances for success on
5 appeal, but whether the appeal would raise material and debatable questions. *See*
6 *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003).

7 After considering the record and relevant case law, the Court finds that
8 reasonable jurists would not find the Court’s determination that Petitioner has not
9 adequately exhausted his claims or adequately stated a claim for relief to be
10 debatable or wrongly decided. As such, the Court declines to issue a certificate of
11 appealability.

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. The Court adopts the Report and Recommendation in its entirety.
- 14 2. Respondent's Motion to Dismiss (Ct. Rec. 20) is **GRANTED**.
- 15 3. The Petition for Writ of Habeas Corpus (Ct. Rec. 1, 7) is
16 **DISMISSED**, with prejudice.
- 17 4. The Court declines to issue a certificate of appealability. Defendant is
18 advised that he may still request a certificate of appealability from the Ninth
19 Circuit Court of Appeals, pursuant to Federal Rule of Appellate Procedure 22(b)
20 and Local Ninth Circuit Rule 22-1.

21 The District Court Executive shall forward copies of this Order to Petitioner
22 and counsel. The file shall be closed and judgment entered for Respondent.

23 **DATED** this 31st day of August, 2010.

24
25 s/Robert H. Whaley
26 ROBERT H. WHALEY
27 United States District Judge

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